

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8521 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HEIRS OF DAHYABHAI M PATEL

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR

Appearance:

MS VP SHAH for KJ BRAHMBHATT for Petitioners
MR SP DAVE, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 30/01/97

ORAL JUDGEMENT

The present petition requires a complete recognition and the rule issued earlier requires to be made absolute.

The petitioners are the holders of the land which were the subject matter of the proceedings under the

Urban Land Ceiling Act, 1976. It appears that the Competent Authority, Surat, under the orders No.ULC/4/1/1848 dated April 15, 1980, had come to the conclusion that there was no excess vacant land. These orders came to be passed because the landholder was having certain lands which have been situated at Rander and Adajan. The land situated at Rander was bearing Survey No.254 admeasuring 2327 sq.mtrs. The other piece of land was situated at Adajan, bearing Survey No.337/2 admeasuring 9510 sq.mtrs. The third property was a duly constructed property which could not have been considered for the purpose of ULC Act, 1976. So far as the land situated at village Rander is concerned, the Competent Authority, under the orders dated April 15, 1980 had taken the view that the said land was exempted under Section 20 of the Act of 1976. The very same was also the view in respect of the other land situated at Adajan. This had resulted into the orders dated April 15, 1980 saying that there was no excess vacant land.

Any how, in the year 1994, the very same authority, namely, the Competent Authority, Surat had initiated certain proceedings under which the earlier orders of the year 1980 came to be examined once again. It is difficult to appreciate as to whether these proceedings could have been said to be the review proceedings or the revision proceedings. The difficulty arises because, the very same authority could not have reviewed or revised its own orders after about 14 years there being no provision for such an exercise under the ULC Act, 1976. It is, therefore, abundantly clear that the Competent Authority could not have pronounced the orders dated March 25, 1994, available at Annexure.E. These orders, at any rate, could not have been confirmed by the Urban Land Tribunal, Ahmedabad, in Appeal No. Surat 65/94. These orders dated August 18, 1996 are in challenge before me.

The first contention coming from learned Counsel Ms.Shah for the petitioner is that, the earlier orders dated April 15, 1980 passed by the Competent Authority could not have been taken for a fresh examination in the year 1994. The learned Counsel urges on merits, that nothing could have been declared as excess vacant land.

Examining the matter on merits, it appears that the land bearing Survey No.254 situated at Rander was exempted under Section 20 of the ULC Act, 1976. The very same was the situation regarding the other piece of land situated at Adajan. In respect of this land also, there was the exemption under Section 20 of the Act of 1976.

Any how, this exemption has not been recognised by the Competent Authority and ultimately, by the Tribunal, on a flimsy ground that the order granting exemption under Section 20 of the Act of 1976 describes this land as the land situated at Rander. It was sought to be explained that the petitioners were not having any land bearing Survey No.337/2 situated at Rander and that merely because there was some mis-description regarding the village, it could not have been said that the land bearing Survey No.337/2 situated at Adajan was not the exempted land under Section 20 of the Act of 1976. This explanation was required to be accepted by the Competent Authority.

Learned Govt. Counsel Mr.Dave wanted to urge with vehemence that, the Competent Authority and the Tribunal, both were of the opinion that there were certain constructions in the lands which were exempted under Section 20 of the Act of 1976, but it requires to be appreciated that, under the earlier orders dated April 15, 1980, these lands have been recognised as the exempted lands under Section 20 of the Act of 1976. There was later on, nothing to warrant a conclusion that there were certain constructions which could not be permissible under the Act of 1976.

Moreover, if at any time, the authority which grants exemption under Section 20 of the Act of 1976, comes to the conclusion that certain terms and conditions of the exemption orders have been violated and certain constructions are put over the lands in violation of such conditions, then it is always open for the authorities under the ULC Act, 1976 to initiate the necessary proceedings in this respect. It shall have to be appreciated that, till today, nothing has been done. In this fact-situation, it could not be accepted that the permission under Section 20 of the Act of 1976 has been violated qua certain conditions.

It is, therefore, abundantly clear that the present petition requires to be allowed and the impugned orders require to be quashed and set aside. I order accordingly. The net effect is that the earlier orders dated April 15, 1980 would come into play under which nothing was declared to be the excess vacant land. Rule is made absolute accordingly with no order as to costs.

It should be clarified upon a plea coming from the learned Govt. Counsel that, it shall be open for the authorities under the ULC Act, 1976 to initiate the proceedings, if permissible under the Act, for the breach

of the conditions of the orders granting exemption under Section 20 of the ULC Act, 1976, if they are satisfied in that respect.
